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Ms. Marlene H. Dortch
 Secretary
 Federal Communications Commission
 445 12th St., SW
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Re: CC Docket Nos. 01-338

Dear Ms. Dortch

Birch Telecom, Inc. ("Birch") is in receipt of the letter filed in this docket on April 2, 2003 by SBC Communications, Inc. ("SBC")¹ concerning statements made by Birch in its December 9, 2002² and February 7, 2003³ ex partes. In those ex partes, Birch addressed, among other things, the operational impairments associated with SBC's hot-cut performance. In that connection, Birch stated that SBC has "an aggregate porting limit of 10 numbers (e.g. 10 analog lines; 1 DS-1 trunk) per central office per hour (for ALL CLECs)" ("Ex Parte Statement").

SBC has chosen to make the Ex Parte Statement the subject of a diversionary attack in order to direct attention away from the record in this proceeding that overwhelmingly demonstrates impairment when unbundled local switching is not available.⁴ As a result, Birch has already devoted significant resources to defending this single statement.⁵ Now SBC is questioning Birch's response by attacking the

¹ Letter from Christopher M. Heimann, General Attorney to SBC, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338 (April 2, 2003) ("SBC Second Letter").

² Letter from Genevieve Morelli to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338 (December 9, 2002).

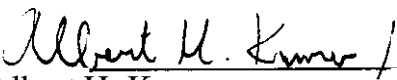
³ Notice of Ex Parte Presentation to Hon. Kathleen Abernathy by Dave Scott, President and CEO, and Greg Lawhon, Senior Vice President and General Counsel, Birch Telecom, CC Docket No. 01-338 (February 7, 2003).

⁴ See Letter from Christopher M. Heimann, General Attorney to SBC, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338 (March 17, 2003) ("SBC Initial Letter").

⁵ In their exchange of ex partes, Birch and SBC have debated Birch's experience with the similar situation of the conversion of Birch customers served with Birch's own switch to service provided by SBC's switch via UNE-P ("DS-0 to UNE-P manual customer migration") as corroborating support for the Ex Parte Statement. See Letter from Jacob Farber, Counsel to Birch, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-338 (March 31, 2003); see also SBC Initial Letter.

corroborating evidence submitted by Birch.⁶ In order to respond to this attack and to provide the full context for the response, it would be necessary to provide the documentation of an entire course of dealing with SBC, and then, there is only the prospect of a further response by SBC that would further prolong this debate. Accordingly, since the record in the *Triennial Review* overwhelmingly establishes that CLECs are operationally impaired without access to unbundled switching separate and apart from the *Ex Parte Statement*, Birch withdraws the *Ex Parte Statement*. Birch believes that both its own resources as well as the Commission's are better expended on other matters than this diversionary attack by SBC.

Respectfully submitted,

By:  / GDK
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⁶ See SBC Second Letter. The focus of the SBC Second Letter is to take issue with the corroborating evidence supplied by Birch with respect to the analogous issue of DS-0 to UNE-P manual customer migration.

⁷ Should the Commission decide to continue this matter, Birch will of course cooperate fully with the Commission.